BAIL ORDER CA NO. 506/01

The Appellant/Accused was directed to be released on bail by the order of this Court dated 25.06.2001 and made in CRL MP No. 3616/01

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 04.07.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.506 of 2001

R.Subbiah .. Appellant/accused

vs.

State rep by
Inspector of Police,
Vigilence and Anti Corruption
Thanjavur(Cr.No.7/99)of
Vigilance& Anti Corruption
Nagapattinam ..
Respondent/Complainant

This Criminal Appeal has been preferred against the judgment passed by the learned Special Judge(Chief Judicial Magistrate) Nagapattinam in C.C.No.1 of 2000 dated 28.05.2001.

For Appellant : Mr.S.Ashok Kumar
Senior Counsel
for Mr.K.Sasidharan

For Respondent : Mr.V.R.Balasubramanian,
Additional Public Prosecutor.

JUDGMENT

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This appeal has been preferred against the Judgment in C.C.No.1 of 2000 on the file of the learned Special Judge(Chief Judicial Magistrate)Nagapattinam.

2. The short facts of the prosecution case is that on 30.8.1999 at about 7.45 p.m., the accused had demanded and received Rs.1,500/- by way of bribe for issuing the land valuation certificate in favour of one Ummal Fazria and that he had committed an offence under Section 7 and 13(1)(d) r/w 13(2) of Prevention of Corruption Act, 1988(hereinafter referred to as "the Act").

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3. After taking cognizance of the offence, the learned trial Judge has issued summons to the accused and on his appearance , copies under Section 207 of Cr.P.C. were furnished to the accused and charges were explained to the accused and when questioned,the accused pleaded not guilty.

4. On the side of the Prosecution P.W.s 1 to 12 were examined. Exs.P1 to P15 were exhibited and M.Os. 1 to 4 were marked.

4a. P.W.1 is the Revenue Divisional Officer, Thiruvarur under whom the accused, the Village Administrative Officer, was working. The material records connected with this case were sent to P.W1, and after perusing the same and after applying his mind to the charges levelled against the accused, had issued the order of sanction for prosecution against the accused under Ex P1.

4b. P.W.2 is the complainant cum decoy witness. According to him, P.W.2 is related to one Ummal Fazria who had applied for an crop loan of Rs.35,000/- in the Indian Bank, Parakathapath Branch and when she went along with P.W.4 , the son of Ummal Fazria to the Indian Bank for the sanction of the loan, the Manager of the said Bank directed them to produce the necessary certificates including the land Valuation certificate and accordingly he along with P.W.4 went and met the accused and before that they have presented the application before the Tahsildar, Valangiman, requesting him to issue land valuation certificate who in turn had affixed his seal and signature and directed them to hand over the same to the Village Administrative Officer,Subbiah, the accused herein, who had demanded Rs.1000/- as bribe per Rs 1,00,000/- to the value of Ummal Fazria's land (who is owning 14 acres of land). Immediately, they returned to their home and four or five days later again they met the accused and requested him to reduce the demand of bribe. Thereafter, the accused had settled for Rs.1500/- since P.W.4 is not willing to give bribe to the accused,he returned by saying that on the following Monday, he will pay the amount demanded by the accused. Since P.W.4 is not willing to give any bribe amount, he (P.W.4) along with P.W.2 went to the Vigilance and Anti Corruption Office, at Nagapattinam and informed them about the demand made by the accused for furnishing the land valuation certificate to the mother of P.W.4. Ex P2 is the complaint preferred by him. Ex P4 is the copy of the first information report. He had also brought with him fourteen 100 rupees notes and two 50 rupees notes which were later made as decoy amount. The Inspector had sent for two Government Servants viz., Ramalingam and Bhaskar and introduced them to him and also introduced him to them and allowed them to read Ex P2 complaint. He has also prepared Sodium Carbonate solution and also explained about the importance of the sodium carbonate test. The Inspector has also sprinkled phenolpthalein powder on the currency notes brought by him(P.W.2). After explaining about the importance of the test and after demonstrating

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the test, the Inspector of Police asked him (P.W.2) to keep the currency notes,with denomination of fourteen 100 rupees notes and two 50 rupees notes which has been sprinkled with phenolpthalein powder with him and further instructed to hand over the decoy amount to the accused only on demand and after the receipt of the bribe amount by the accused to signal the police officials by tying his kerchief on his head, as per directions of the Inspector of Police, he along with two vigilance Inspectors, trap witness Ramalingam and other police constables and other witnesses like Rajendran and Kuppusamy went to Alangudi Village where the accused is working as Village Administrative Officer in a van . After parking the van from about one furlong away from the office of the accused, he along with the other teammates went there and found the office of the Village Administrative Officer, locked and since the accused did not turn up till 6.00p.m., in the taluk office, went Ayyampettai where the accused , the Village Administrative Officer's house is situate. The Inspector along with his team mates was also present by that time, he along with his team mates reached Ayyampettai. He along with Ramalingam went to the house of the accused at about 7.00 p.m., at that time, the accused was watching TV. On seeing P.W.2, the accused had invited him and enquired whether he had brought Rs.1500/- as instructed by him. P.W.2 informed him that he had brought the amount of Rs.1500/- demanded by him. The accused enquired about the witness Ramalingam. P.W.2 introduced to him as an Electrician working in his aunt's shop at Kumbakonam. The accused offered tea to him and witness Ramalingam by taking them to a tea stall run by one Sekar at the Bazaar and after taking tea, the accused asked him to follow him and enquired whether he had brought the amount, to which the reply was in the affirmative and informed him that he had brought Rs.1500/- as demanded by him. The accused had received Rs.1500/- to him and asked him to get certificate from his assistant Visu. He would further depose that the amount of Rs.1500/- was the decoy amount which was sprinkled with the phenolpthalein powder at the office of the Vigilance and Anti corruption. The accused after receiving the amount of Rs.1500/- in both the hands had kept it under his right hand. Immediately, P.W.2 signalled the police officials by tying his kerchief over his head. Immediately the Inspector of Police along with his men came there and at that time on seeking them, the accused tried to put the amount into his pocket which was prevented by the Inspector of Police. Immediately, the accused throw away the amount on the ground. Afterwards, he left the place for a short distance. The Mahazar was prepared under Ex P6 by the Inspector of Police in which he and other two witnesses have signed. He has also identified M.O.1 series as fourteen 100 rupees notes and two 50 rupees notes handed over by him to the accused as a bribe amount.

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4c. P.W.3 is the trap witness who had also accompanied with P.W.2 on the date of occurrence to the accused. P.W.3 in response to the call made by the Inspector of Police went to the Vigilance and Anti corruption Office where P.W.2 was present. The Inspector of Police had introduced P.W.2 to him and also had shown the complaint preferred by P.W.2 to him and asked him to read the same. He was also present at the time of phenolpthalein test was demonstrated by the Inspector of Police. He has also corroborated the evidence of P.W.2 in other aspects. According to him, he also accompanied him to P.W.2 to the house of Village Administrative Officer,Subbiah/the accused and also corroborates the evidence of P.W.2 to the effect that on demand of the accused, after taking tea near the tea shop, a sum of Rs.1500/- and on the receipt of the same by the accused in both the hands kept on his right hand and after handing over the bribe amount to the accused, P.W.2 had signalled the police officials by tying up his kerchief over his head and on seeing the police, approaching him, the accused immediately thrust the amount into the pocket of P.W.2 which was prevented by the Inspector of Police. Immediately, Sodium carbonate solution was prepared and the Inspector of Police asked the accused to dip his finger in it. When he did so, the colour of the solution turned pink. According to him, on seeing the police, the accused had thrown the amount on the ground which was taken by him as per the instructions of the Inspector of Police and after verifying the currency notes numbers with that of the numbers noted in Ex P4 Mahazar prepared at the vigilance and anti corruption office during the demonstration of the sodium carbonate solution test and found that the numbers in the currency notes recovered from the accused and numbers noted in Ex P4 Mahazar were tallied. The Inspector of Police has prepared Mahazar Ex P6 for what had transpired at the time of trap.

4d. P.W.4 is the son of Ummal Fazria who had applied for the crop loan of Rs.35,000/- in the Indian Bank. He would depose to the fact that for getting necessary certificates for the sanction of the crop by the Indian Bank, he brought the Tahsildar and presented the application on behalf of his mother and as per direction of the Tahsildar he met the Village Administrative Officer on 9.8.1999 and asked for the issuance of land valuation certificate by the Tahsildar and also handed over the application containing the signature and seal of the Tahsildar. The accused had demanded Rs 1000/- per Rs.1,00,000/- for issuing the land valuation certificate. P.W.2 had settled the bribe amount as Rs.1500/- and returned by saying that they will pay the amount on the following Monday. Since he is not willing to give any bribe , he requested P.W.2 to prefer a complaint to the Vigilance and Anti Corruption Department and that he had handed over the power of attorney deed

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and also the no due certificate to the Vigilance and Anti Corruption Department.

4e. P.W.5 is the then Tahsildar of Valangaiman. He would depose that the Deputy Tahsildar Headquarters has handed over the powers to refer the application to the Village Administrative Officer and Revenue Inspector and after getting the report from the Village Administrative Officer and Revenue Inspector and after verification, the necessary Land valuation Certificate will be issued by the Tahsildar. He would admit that he was interrogated by the Vigilance Police Officials of Tanjore District by showing the xerox copy of the application filed by P.W.4 Mohamed Nazir. He would admit that the headquarters Deputy Tahsildar has endorsed in the application.

4f. P.W.6 is the then Headquarters Deputy Tahsildar of Valangaiman during the relevant period. P.W.6 and P.W.7 were also enquired by the Vigilance Officials. P.W.8 is the Secretary of the Primary Agricultural Cooperative Bank,Mathur. According to him, P.W.4 had applied for the issuance of "No due certificate" for his mother and after verifying the records, he had issued Ex P7 "No due Certificate" in favour of Ummal Fazria.

4g.P.W.9 has issued Ex P8 certificate certifying that there is no due from Ummal Fazria to Indian Bank, Adavankudi Branch. P.w.10 is the Deputy Manager of Indian Bank at the time, when he was working as Branch Manager of Adavankudi, Indian Bank. He would admit that Ummal Fazria came to the bank and filed an application for crop loan to the tune of Rs.35,000/- under Ex P9 and that Ex P9 application was presented by P.W4, the son of Ummal Fazria and that under Ex P10, he has asked him to furnish the necessary certificates mentioned therein.

4h.P.W.11 is the analyst who had analysed the sodium carbonate solution samples connected with this case sent for analysis in which the accused had dipped his fingers. Ex P11 is the analyst's report. P.W.12 is the Investigating Officer in this case. He speaks about the complaint preferred by P.W.2 and also about the registering of First Information Report under Ex P12 and speaks about the demonstration of sodium carbonate test in the presence of the witnesses secured in this case and also about the signal given by P.W.2 after handing over the decoy notes prepared at his office to the value of Rs.1500/- and also about the phenolpthalein test conducted to the accused after the receipt of the bribe amount and also about the Mahazar prepared under Exs P4 and P6. He has not recovered any objects under Ex P5 search conducted in the house of the accused. He has prepared observation mahazar Ex P13 and also had drawn a rough sketch Ex P14. M.Os.2 and 3 are the sodium carbonate solution prepared after the trap. After arresting the accused brought him to the office of the Vigilance Anti Corruption and had sent the material objects connected with this case to the

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Court.

4i. P.w.13 is the successor of P.W.12 who had took up further investigation and examined the witnesses and recorded their statements and after completing the formalities, had filed the charge sheet against the accused on 22.10.1999.

5. When incriminating circumstances were put to the accused, the accused would deny his complicity with the crime. But he would state as defence that the amount received by him from P.W.2 is only a tax due. The accused has also examined D.W.1 and exhibited EX D1 to D3.

6.After going through the oral and documentary evidence, the learned Trial judge has held that the prosecution has proved the guilt of the accused under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 and accordingly convicted and sentenced the accused to undergo Rigorous Imprisonment for six months under Section 7 and also one year Rigorous Imprisonment under Section 13(2) read with 13(1)(d) besides a fine of Rs.1,000/-. Aggrieved by the findings of the Trial Judge, the accused has preferred this appeal.

7. Now the point for determination in this appeal is whether M.O.1 series Decoy amount of Rs.1500/- was received by the accused towards the amount due under revenue(Kist amount) or the same was offered by P.W.2 the complainant as a bribe amount for the issuance of Land valuation certificate to P.W.4's mother Ummal Fazria?

8. Heard Mr.S.Ashok Kumar,learned Senior Counsel appearing for the appellant and Mr.V.R.Balasubramaniam, learned Additional Public Prosecutor for the State and considered their rival submissions.

9. The POINT:
The learned Senior counsel appearing for the appellant/accused relying on Ex D2 receipt for the land tax for Ummal Fazria prepared by the accused and cancelled on 23.7.1999 and contended that the said receipt was cancelled subsequently because P.W.2 had failed to pay the tax due under Ex D2 and that on the date of occurrence, he (P.W.2) had paid only the tax due under Ex D2 receipt for Ummal Fazria and that he (the accused) has not demanded any illegal gratification for issuance of land valuation certificate in favour of Ummal Fazria to enable her to get crop loan for Rs.35,000/- from the Indian Bank . This contention of the learned Senior counsel cannot be upheld because the amount due under Ex D2 is Rs.1730/- but the amount demanded and received by the accused was Rs.1500/-. The learned Senior counsel pointing out the deposition of P.W.2 in the cross examination as to his denial even to the receipt of Ex D2 would contend that the evidence of P.W.2 is to be

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eschewed. But P.W.2 is a decoy witness in this case. He speaks to the fact that in pursuance of the earlier demand made by the accused and later settled for a lessor amount of Rs.1500/- only with an assurance that he will pay the bribe amount demanded by the accused on the following Monday he returned and since the son of Ummal Fazria viz., P.W.4 is also not for getting the necessary certificate for the sanction of loan in favour of his mother by way of greasing the palm of accused both P.W.2 and P.W.4 have decided to prefer a complaint to the Vigilance and Anti Corruption department and accordingly P.W2 went to the office of the Vigilance and Anti Corruption Department preferred ExP2 complaint. The relevant portion of the evidence of P.W.2 in the chief examination would prove the demand and acceptance of Rs.1500/- by the accused from P.W.2 towards illegal gratification for issuance of the required certificate by P.W.2. P.W.2 along with the trap witness P.W.3 met the accused at his house at about 2.00p.m., on the occurrence date and on seeing P.W.2, the accused had invited him and on P.W.2 informing the accused that he had brought Rs.1500/- as demanded by the accused. The accused after enquiring about the witness Ramalingam(P.W.3) took them to near by tea stall and offered tea and after taking tea,he enquired P.w.2 after taking him to a distance of about 4 feet from the trap witness and enquired whether he had brought the amount demanded by him. Immediately P.W.2 had answered in the affirmative and handed over Rs.1500/- the decoy amount to the accused which was received by him and after counting the same had kept in his right hand . This part of the evidence of demand and receipt Rs 1500/- has been corroborated by P.W.3 the trap witness. If Rs 1500/- received by the accused is only towards the arrears of land tax due under Ex D2, then the accused after seeing the police,who came after the signal given by P.W.2, would not have attempted to thrust the amount into the pocket of P.W.2 or throw the same on the ground. This very conduct of the accused itself will go to show that the amount of Rs.1500/- received by him from P.W.2 is not the amount of tax due under ExD2 receipt.

10. The learned Senior counsel would contend that the accused is not a competent authority to issue the land valuation certificate and there is no necessity for him to demand Rs.1500/- for the issuance of the land valuation certificate in favour of the mother of P.W.4. But it is in evidence that the application for the land valuation certificate was presented by P.W.4 only to the Tahsildar who is examined as P.W.6 who in turn had countersigned in the said application and forwarded the same to the accused, Village Administrative Officer for verification.

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11. Under such circumstances, the contention of the learned Senior counsel relying on a ratio decidenti in T.Subramanian -v- State of T.N(2006)1 Supreme Court Cases(cri) 401) contended that if the accused offers reasonable and probable explanation basing on evidence that the money was accepted by him, other than as an illegal gratification , then the accused would be entitled to acquittal, cannot be sustainable in the present facts of the case. EX D2 is for Rs.1730/- whereas the amount demanded and received by P.W.2 was Rs.1500/- and as I have observed earlier, that if the amount received by the accused is only for the amount due under Ex D2 then there is no necessity for him to thrust the same into the pocket of P.W.2 after seeing the police and also to throw the amount on the ground.

12. Yet another ratio relied on by the learned Senior counsel is Ramakrishnan-v- State rep. by Inspector of Police, D & VAC,Chennai(2007) 1 M.L.J(cri) 430 will not also be applicable to the present facts of the case because in the above cited dictum, the prosecution has failed to prove the demand and acceptance of the illgotten money. It has been held in the said decision by the Judge of this Court that mere proof of receipt of money by accused, in absence of proof of demand and acceptance of money as illegal gratification, not sufficient to establish the guilt of accused and that once the prosecution failed to prove the same , the entire prosecution falls into the ground. But in the present case on hand, the demand and acceptance of Rs.1500/- has been proved by P.w.2 the decoy witness and also by P.W.3 trap witness.

13. The next point focused by the learned Senior counsel relying on a decision reported in Harchand Singh-v- State of Haryana(AIR 1974 Supreme Court 344) is that in a case where the prosecution leads two set of evidence, each one of which contradicts the other, it is difficult to find the conviction can be sustained. According to the learned Senior counsel , the charge framed in this case by the trial Court is that only on the application filed by Ummal Fazria for the issuance of land valuation certificate, for processing the same, the accused had demanded Rs,1500/- towards bribe. But evidence let in by the prosecution through P.W.2 is that the application for the issuance of the land valuation certificate was presented by P.W2 and P.W.4 which is contrary to the charge levelled against the accused. No doubt the trial Court which framed the charge has observed that the application for the issuance of land valuation certificate was filed by Ummal Fazria. A perusal of the charge sheet filed by the Investigating Officer will go to show that for getting the loan in the name of Tmt Ummal Fazria in the Indian Bank, Adavankudi Branch, the bank required the land valuation certificate from the revenue authorities and for that purpose, Tmt Ummal Fazria's , son Mohamed

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Nazir(P.W.4) and his cousin Mohamed Hanifa (P.W.2) went to the Tahsildar, Valangaiman and presented a petition on 10.8.1999 for getting the land valuation certificate and it is further specifically stated that the petition was sent by Mohamed Nazir (P.W.4) . Under such circumstances, it cannot be said that the mistake committed in narrating the facts while framing the charges by the trial Court will thwart the case of the prosecution. So I am of the view that the prosecution has proved the guilt of the accused as rightly held by the learned trial Judge.

14. Now coming to the conviction and sentence of the accused by the learned trial Judge under Section 7 and 13(2) r/w 13(1)(d) of the Act, the principle laid down by the Honourable Apex Court in State rep. by Inspector of Police, Pudukottai-v- A.Parthiban(2007) 1 MLJ (cri) 351: 2007(1) SCC(cri)520) wherein it has been held that conviction under Section 7 and also under Section 13(2) r/w 13(1)(d) of the Act is maintainable but there cannot be a sentence under Section 7 as well as under Section 13(2) r/w 13(1)(d) of the Act. The relevant observation of the Apex Court in the above said dictum runs as follows:

"Every acceptance of illegal gratification, whether preceded by a demand or not, would be covered by Section 7 of the Act. But if the acceptance of an illegal gratification is in pursuance of a demand by the public servant, then it would also fall under Section 13(1)(d) of the Act. The act alleged against the respondent, of demanding and receiving illegal gratification constitutes an offence both under Section 7 and under Section 13(1)(d) of the Act. The offence being a single transaction, but falling under two different sections, the offender cannot be liable for double penalty. But the High Court committee an error in holding that a single act of receiving an illegal gratification, where there was demand and acceptance, cannot be an offence both under Section 7 and under Section 13(1)(d) of the Act. As the offence is one which falls under two different sections providing different punishments, the offender should not be punished with a more severe punishment than the court award to the person for any one of the two offences. In this case, minimum punishment under Section 7 is six months and the minimum punishment under Section 13(1)(d) is one year and the court wants to award only the minimum punishment, then the punishment would be one year."

15. Under such circumstances, following the above ratio, I am of the opinion that the accused even though is liable to be convicted under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 is liable to be punished only under one of the above provision of law ie only under Section 13 (2) read with 13(1)(d) to undergo one year rigorous punishment. The point is answered accordingly.

16. In the result the appeal is dismissed confirming the Judgment of the learned Special Judge in C.C.No.1 of 2000 on the

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file of Special Judge(Chief Judicial Magistrate) Nagapattinam. The accused is convicted under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988. But the sentence of the Trial Court alone is modified and the accused is sentenced to one year Rigorous Imprisonment under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988, instead six months Rigorous Imprisonment under Section 7 and 1 year RI under Section 13(2)r/w 13(1(d) of Prevention of Corruption Act, 1988. The fine imposed under Section 7 of the Prevention of Corruption Act, 1988 shall be refunded to the accused, but the fine imposed under Section 13(2) read with 13(1)(d) by the Trial Judge shall sustain. The Trial Court is directed to secure the accused and send him to prison to undergo the unexpended portion of the sentence.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar.

To

1. The learned Special Judge(Chief Judicial Magistrate) Nagapattinam.
2. The Public Prosecutor, High Court, Madras
3. The Inspector of Police, Vigilance and Anti Corruption , Thanjavur.
4. The Inspector of Police,Vigilance and Anti Corruption, Nagapattinam

• one cc to Mr. A. Sasidharan, Advocate sr no. 40416

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